

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Paula A.,

No. 22-cv-2358 (KMM/DJF)

Plaintiff,

v.

ORDER

Martin J. O'Malley, Commissioner of the
Social Security Administration,

Defendant.

This matter is before the Court on two Reports and Recommendations (“R&R”) issued by Magistrate Judge Dulce J. Foster, dated June 20, 2024 and September 16, 2024. ECF Nos. 43, 51. Both the June 20th R&R and the September 16th R&R concern motions for attorney’s fees filed by Plaintiff Paula A.’s counsel.

In February 12, 2024, this Court issued an Order adopting an October 11, 2023 Report and Recommendation from Judge Foster, and remanded Ms. A.’s case to the Social Security Administration for further proceedings. ECF No. 28. After the Court issued that Order, on May 12, 2024 Ms. A filed a Motion for Attorney’s Fees pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. ECF No. 32. Ms. A.’s counsel sought EAJA fees in the amount of \$9,348.00 for 41.0 hours of work at a \$228.00 hourly rate, and \$502.00 in costs. Chermol Decl., ECF No. 33. Additionally, Ms. A.’s counsel requested an additional \$1,140 for time spent litigating his EAJA request. ECF No. 41. Judge Foster issued the first R&R on June 20, 2024 recommending that Ms. A. be awarded \$7,250.40

in attorney's fees and \$502.00 in costs under the EAJA. 6/20/2024 R&R, ECF No. 43. Neither party objected to this recommendation.

Meanwhile, with Ms. A's case on remand to the Social Security Administration, an ALJ issued a favorable decision to Ms. A. finding her disabled. ECF No. 45 ¶ 1. Ms. A.'s "Notice of Award" indicates that she is entitled to \$107,482.00 in past due benefits, with twenty-five percent (\$26,870.0500) withheld to pay an approved attorney fee. ECF No. 48 at 3–4.

After Ms. A received the favorable decision before the agency, and while the June 20th R&R remained pending, Ms. A's counsel filed the second motion for fees. In the second motion, Ms. A's counsel requested an award of fees pursuant to 42 U.S.C. § 406(b). Ms. A's counsel indicated that Ms. A and her attorney entered a contingency fee agreement ("Agreement"). ECF No. 45. In the Agreement, Ms. A. agreed to pay

a fee equal to twenty five percent (25%) of all past due benefits which are awarded on my account plus any Equal Access to Justice Act (EAJA) award, regardless of whether those amounts exceed Six Thousand dollars (\$6,000.00).

9/16/24 R&R, ECF No. 51 at 1. Because the ALJ found that Ms. A. is entitled to \$107,482.00 in past due benefits, Plaintiff's counsel seeks to recover 25 percent of that total, which is the \$26,870.50 that was withheld to pay an approved attorney fee. ECF No. 45 ¶ 1; ECF No. 48 at 3–4. Plaintiff's counsel further requests that the \$26,870.50 figure be reduced by \$7,250.40 to account for the award of fees under the EAJA that Judge Foster recommended be awarded in the June 20th R&R. Thus, Plaintiff's counsel seeks a total award of \$19,620.10.

In the September 16th R&R, Judge Foster recommended that Ms. A.'s second Motion for Attorney's Fees be granted, and that Ms. A.'s counsel be awarded \$26,870.50 in fees, reduced by the originally recommended EAJA fee award of \$7,250.40, ECF No. 43, for a net total fee of \$19,620.10 to be paid from Plaintiff's past due benefits, pursuant to 42 U.S.C. § 406(b). ECF No. 51. Once again, neither party objected.

The Court reviews *de novo* any portion of the R&R to which specific objections are made. 28 U.S.C. § 636(b)(1); D. Minn. LR 72.2(b). In the absence of objections, the Court reviews the R&R for clear error. *Nur v. Olmsted County*, 563 F. Supp. 3d 946, 949 (D. Minn. 2021) (citing Fed. R. Civ. P. 72(b) and *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam)).

The Court has carefully reviewed this matter and finds that the requested fee award is fair and reasonable for the services rendered. The Court agrees with Judge Foster's June 20th R&R and concludes that the EAJA fee award sought by the Plaintiff was reasonable. The Court also agrees with Judge Foster's determination in the September 16th R&R that Ms. A.'s counsel should receive an award of fees pursuant to 42 U.S.C. § 406(b), and the 25 percent of the past-due benefits should be reduced by the amount of EAJA fees that Judge Foster earlier recommended be awarded. Accordingly, the Court grants Ms. A.'s motions for attorney's fees as set forth below.

IT IS HEREBY ORDERED THAT:

1. Magistrate Judge Foster's June 20, 2024 and September 16, 2024 R&Rs, ECF Nos. 43 and 51 are **ACCEPTED**;
2. Plaintiff's motions for attorney's fees, ECF Nos. 32 and 45, are **GRANTED**;

3. Plaintiff's Counsel is awarded \$26,870.50 in fees, reduced by the Court's original EAJA fee award of \$7,250.40, for a net total fee of \$19,620.10, to be paid from Ms. A.'s past-due benefits, pursuant to 42 U.S.C. § 406(b).

Date: October 22, 2024

s/Katherine Menendez

Katherine Menendez
United States District Judge